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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,486	11/25/2003	Roderick Komar	KOMAR02	2761

7590 02/24/2005

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EXAMINER

MAMMEN, NATHAN SCOTT

ART UNIT PAPER NUMBER

3671

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/721,486

Applicant(s)

KOMAR, RODERICK

Examiner

Nathan S Mammen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 5, 7, and 8 are objected to because of the following informalities: Claim 5 recites the limitation “the self propelled collection bin” in line 1. Claim 7 and 8 recite the limitation “the transverse conveyor” in line 1. For each of these limitations, there is insufficient antecedent basis for the use of the article “the.” Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,795,099 to Getsinger.

The Getsinger ‘099 patent discloses a cranberry harvester having a picking head for stripping fruit. The harvester has an axial endless conveyor means (22) powered by a main drive pulley and having a berry receiving and berry depositing end. The harvester further comprises a picking accessory comprising a conveyor (32) in combination with an accessory bin (44). The conveyor is mounted on the harvester for receiving fruit from the axial conveyor and conveying the fruit to the accessory bin.

Regarding claims 9-10: The method, as claimed, is inherent as the normal and logical manner in which the Getsinger ‘099 patent would be used.

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4. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,210,999 to Cosimati.

The Cosimati '999 patent discloses a fruit harvester having a picking head (24). The harvester has an axial endless conveyor means (26) having a berry receiving end and a berry depositing end (generally at 120). The harvester further comprises a conveyor (44) in combination with an accessory bin (46).

Regarding claim 2: The conveyor (44) is arrayed as a transverse conveyor positioned transversely in orthogonal relationship to the axial conveyor and movable between a left and right hand pick position (see arrows).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,210,999 to Cosimati in view of U.S. Patent No. 6,682,416 to Behnke et al.

The Cosimati '999 patent discloses the claimed invention, as stated in paragraph 4 above, except for the accessory bin being a self-propelled accessory bin. The Behnke '416 patent teaches that it is known in the agricultural art to provide a self-propelled accessory bin (43) in combination with a harvester (1) and to transfer harvested products from the harvester to the self-propelled accessory bin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the accessory bin (46) of the Cosimati '999 patent with

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self-propulsion, as taught by the Behnke '416 patent, in order to enable new, empty accessory bins to be provided while the harvester is operating without requiring the harvester to be stopped.

Regarding claims 4-6: The details of the conveyor, including the drive arrangement and height of operation, would have been obvious to one having ordinary skill in the art.

7. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,210,999 to Cosimati.

The Cosimati '999 patent discloses the claimed invention, as stated in paragraph 4 above, except for the details of the drive arrangement or the materials of construction for the belt. It would have been obvious to one having ordinary skill in the art to use a harvester power pulley to drive the conveyor. See col. 6, lines 17-19 ("driven by a suitable hydraulic motor **or the like**") (emphasis added). The Cosimati '999 patent discloses that the conveyor (44) has flight members, but the Cosimati patent does not disclose the material of construction. However, the examiner takes OFFICIAL NOTICE of the equivalence of utilizing plastic with other materials, such as metal or rubber, in the construction of conveyors for transporting fruit in a harvester, and the selection of any of these equivalents would be obvious to one having ordinary skill in the art.

### ***Conclusion***

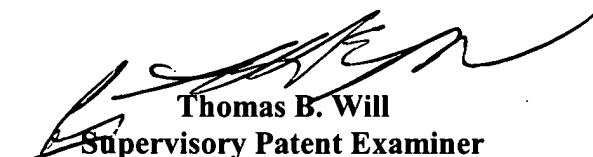
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (703) 306-5959. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (703) 308-3870. The fax number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.



**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group 3600**

**NSM**  
**2/17/05**

**Nathan S. Mammen**